EXHIBIT 15
DATE 1-24-07
HB 303

Natural Resource Committee

Comments concerning HB 205 and HB 203
Submitted by Shawna Floyd, 568 Batavia Lane Kalispell, MT

Mr. Chairman and Members of the Committee:

My name is Shawna Floyd. I live at 568 Batavia Lane Kalispell, MT. My background includes eleven years of honorable service in the United States Navy as an Anti-Submarine Warfare Technician. Currently, I am a stay-at-home mom and one of 54 petitioners in Smith Valley who requested DNRC to place some corrective measures in our fractured bedrock area.

I drove here from Kalispell because I feel it is very important to share my 3+ year Controlled Groundwater Area petition experience with you before you consider two bills today that are very different but both an attempt to address the broken DNRC process for Controlled Groundwater Areas.

There were 54 petitioners who stumbled through this process, some lasted longer than others. I happen to be one that made it through the hearing. My blood is still on that podium but I survived.

How it started: In July and Oct 2003, six families, including a cattle ranch experienced a loss of water. I was not one of them. A well pump shared by four nearby families burned out. It was later proven to be caused by a new subdivision pump test on a well about ¼ mile away – characteristic of a **fractured bedrock setting**.

Plans for up to 116 new homes were disclosed to me by the same developer and I became immediately concerned about how I was going to share my 1.5 gpm with these new wells. I and others organized a community meeting, searching for answers to protect our water from over appropriation.

The developer and his team, which were engineers and well drillers, came to the meeting. Their answer to middle class neighbors who lost water during the new well pump tests was they would sell the property for $3 million.

The Kalispell DNRC office, as well as a private consultant, hydrologist Roger Noble, who also happens to be a former DNRC employee, was consulted by concerned neighbors. DNRC offered the CGA process as the only way to address a regional problem of aquifers in a fractured bedrock setting.

Costs were estimated for the CGA process. We, as existing water right holders and CGA petitioners, would be required to hire a hydrologist to collect baseline data on water levels in the area. DNRC Kalispell staff stated that our hydrologist fees, between $90 to $125/hr, would be our biggest expense and that historically the hearing costs would be somewhere from $300 to $700. We took a collection, formed an association, and have been paying ever since.

Over the last 3 years, a minority of the petitioners have contributed over $12,000.00 in defense of their water quality and quantity. Why a minority? We live in a very poor area of Flathead Valley and many do not have the income necessary to redrill or be proactive in protecting their water. Much of this $12,000.00 has been DNRC fees of notification, copies of our petition sent to all interested persons including Representative George Everett and his wife, well drillers outside our county because

DNRC felt they might want to know, and responses to many, many motions filed by our opponents' attorneys.

Today you will see two bills that try to address a broken DNRC process called Controlled Groundwater Areas (CGAs).

I believe that HB 205, sponsored by Mr. Everett, will render citizen initiated CGAs useless, further breaking the only system offered by DNRC to prevent damage to water quality and quantity before it occurs.

It is impossible to relay to you the coordination and amount of work we expended, the thousands of hours volunteered by many people, and the amount of money spent to get through the process as it is currently written.

I oppose HB205 because it heavily increases the burden on Montana state residents when they need to protect their water. In fact, the total emphasis of this bill is to increase the paper work and charge the petitioners with ALL costs, including state employees wages, travel etc.

What is the motivation for this change? What does ALL costs mean? Who controls the costs? Can opponents drive the costs up so much that the issue of water protection is lost in the fees and my son, daughter or parent have to haul water or drink contaminated water because they cannot afford to petition their government?

Two opponents of the Smith Valley CGA petition stated that the petitioners owed them reimbursement for costs they incurred for opposing the petition because of how the law is currently written. How much more will they feel entitled to seek for repayment if the law changes according to HB 205?

This bill will greatly increase petitioners' expenses, penalize them in copy and postage charges for collecting maximum data and provide an open checkbook for DNRC to spend without caution. There is nothing positive in this bill and only the wealthiest will be able to petition their government. In light of this, I respectfully request that you kill HB 205.

The other bill introduced today is HB 203, sponsored by Mr. Jopek. This bill also attempts to change the Controlled Groundwater process. I urge you to table this bill and request that it go back to the drawing board for the following reasons:

HB203 states that there will be rules made by DNRC but does not give limits or guidance for those rules. Rules would be wonderful if they are in black and white and non-changing one CGA hearing to the next. This was not our reality. And the rulemaking process even eliminates the hearing process, the only method for petitioners to be heard in a public forum.

Because DNRC made new rules specifically for the Smith Valley CGA hearing, it was unlike any other CGA hearing in DNRC history. The recorded pre-hearing conferences and the recording of the five-day hearing are proof by themselves that the public hearing intended by the legislators specifically for a lay person was actually a trial process in which no petitioner/proponent was qualified to participate without legal representation.

It will be impossible for petitioners to prepare for a hearing when new rules can be made as the process unfolds and those rules may mean law school is a prerequisite.

Submitted by Shawna Floyd
Jan 24, 2007

MCA 2-3-111 (2003) addresses" Opportunity to submit views-public hearings. Section 1 Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data views, or arguments orally or in written form prior to making a final decision that is of significant interest to the public." This statue implements the **Montana Constitution, Section 8** guaranteeing "the public has the right to expect governmental agencies to afford such reasonable opportunity for citizens' participation in the operation of the agencies prior to the final decision as may be provided by law."

The DNRC rules specially designed for our five-day trial (hearing) started on April 24, 2006 and the July 25, 2005 Order Setting Schedule and Procedure could only be considered reasonable for lawyers to understand and execute.

DNRC should not be given more liberty to fashion rules on the fly. That is what happened to Smith Valley petitioners after they were deeply invested emotionally and financially in their CGA process.

Rules should be non-evolving and should not respond to who carries the biggest hammer or has the most money. Petitioners should not wonder what the rules will be as they collect funds via community yard sales and bake sales to pay their way as we did.

Initially DNRC personnel quoted $300 to $700 for a hearing. Invoices totaling over $2,800.00 with a quote of $7,300 +/- appeared after we requested a hearing.

I submit exhibit A for the record. This was sent to petitioners only after the shocking invoice over $2300 appeared. We researched DNRC records for previous "reasonable fees" paid by petitioners and found $100 to $2,400 total for prior CGAs in Montana.

At the beginning, DNRC staff explained that we petitioners would present our testimonies and evidence at a public hearing and opponents would do likewise. After the Hearing Examiner developed his rules in July 2005, we ended up without attorney representation at a 5 day trial, 95% of our 100 + exhibits were excluded because we didn't know the legal jargon and the format to introduce them, our expert witness' testimony was limited to 2-year old data although she had prepared an analysis of recent data, and I personally was not allowed to testify even after providing the opponents' 3 attorneys 12 hours of unprotected and unlimited deposition – another rule made by DNRCs Hearing Examiner in July 2005.

When DNRC Director Mary Sexton encouraged us to apply for a grant to help fund hydrology studies, we did and were turned down because of our opponents' interference. When we informed the county that there was funds available to them for groundwater research, our opponents bullied their way into a health board meeting, forced the board to take an illegal vote against assisting petitioners in their efforts to protect water, and squelched any attempt by the county to seek funding for hydrology studies.

Because of my experiences, I urge you to table HB 203 as it is and require language to address DNRCs mandate to protect the water against over appropriation, revise the statue to define a fair, full public hearing process and require the state to fund groundwater research.

Thank you for listening and thank you for your service to this state.

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Jan 24, 2007